IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1389 OF 2001

M/s.Macnair Exports Pvt.Ltd.
& Another .. Petitioners.

V/s.

Union of India & Others .. Respondents.

Mr.Nitin Dhumal for the petitioners.

Mr.S.S. Pakale for the respondents.

**CORAM : DR.S. RADHAKRISHNAN &
J.P. DEVADHAR, JJ.**

DATED : 27TH FEBRUARY, 2006.

P.C. :

1. Heard the learned counsel for the petitioners and the learned counsel for the respondents.

2. By this petition, the petitioners are claiming interest with regard to refund claim pursuant to an order passed in appeal. We have heard the learned counsel for both the parties and perused the record. It appears that pursuant to the order dated 7th April, 1998 passed by the Commissioner of Customs in appeal, the petitioners appears to have made an application for refund on 8th May, 1998. However, the said application was defective. When the same was pointed out, the applicants seems to

have partly rectified the same on 21st October, 1999. However, still as pointed out by the Office of the Joint Commissioner of Customs (Preventive) by letter dated 27th March, 2000, the petitioner had not furnished T.R.6 challans and in view thereof the petitioners were directed to file proper indemnity bond and the petitioners had complied with the same only on 21st November, 2000 and thereafter the refund cheque was issued by the respondents on 7th December, 2000. Under the aforesaid facts and circumstances, we do not find any fault on the part of the respondents, in refund being delayed. The petitioner has not complied with all the requirements which are necessary at the time of application for refund was made. Even after being pointing out, the indemnity bond was furnished only on 21st November, 2000 and within a period of one month the refund has been granted.

3. One more contention of the learned counsel for the petitioners is that the respondents have not complied with the rules of Customs Refund Application (Form) Regulations, 1995, Notification No.34/95-Cus. dated 26th May, 1995. The learned counsel for the petitioners placed reliance on Rule (2) and (3) of the said Regulations, which reads thus :

> "(2) The application shall be scrutinised for its completeness by the Proper Officer and if the application is found to be complete in all respects, the applicant shall be issued an acknowledgement by the Proper Officer in the prescribed Form appended to these regulations within ten working days of the receipt of the application.
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> (3) Where on scrutiny, however, the application is found to be incomplete, the Proper Officer shall, within ten working days of its receipt, return the application to the applicant, pointing out the deficiencies. The applicant may resubmit the application after making good the deficiencies, for scrutiny."

4. The learned counsel for the petitioners sought to contend that the department was not diligent to inform the petitioner within ten days regarding the deficiencies. However, from the facts stated hereinabove, it is clear that the petitioner has not been diligent at all, hence the petitioner cannot complain.

5. Under the aforesaid facts and circumstances of the case, we do not find any fault with the respondents. The petition is devoid of any substance. The same is dismissed with no order as to costs.

(DR.S. RADHAKRISHNAN, J.)

(J.P. DEVADHAR, J.)